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Hawaiian Gazette

TUESDAY, OCTOBER 25, 1887.

Supreme Court.

OCTOBER TREES, 1887. Justice Bickerton presiding.

Monday, October 17th. Perett vs. Kana. Covenant, damages \$2,000. Hawaiian jury. Kinney for plain-tiff; Castle for defendant. Verdict for

plaintiff for \$400 damages. Tuesday, October 18th. The King vs. Ahung. Forgery. The hearing occupied the whole day.

J. A. Magoon assisted the Crown; A. Rosa and A. C. Smith for defendant.

The jury after about ten minutes' absence from their box, returned a verdict of guilty. Wednesday, October 19th. The foreign jurors were in attendance but counsel were not ready to go on with the cases called for hearing. Court took a recess

to 1:30 o'clock. At I:30 p. m. the Court resumed. Flora Howard St. Clair versus Walter Murray Gibson, Breach of Promise. Smith and Kinney for plaintiff; Neumann and Hatch

for defendant.
A motion was made by Messrs. Neumann and Hatch for a continuance of the case un-til next Term, for the reason that it is impossible for the defendant to be present at the trial this Term, and a deposition can-not be taken on account of the defendant's sickness as appears from the affidavit filed

Mr. Neumann made affidavit saying that it was essential to the case of the defendant that he should be present at the trial to give his testimony; that he was informed by the defendant and verily believed that he would testify if able to be present that he had never made to the plaintiff any promise of marriage and had done nothing to lead her to believe that he had any intention of marrying her and had never acted towards her as a man would to an intended wife; and that he would be able to explain the evidence the plaintiff might give on this subject, but as it was impossible to foretell what the plaintiff's evidence would be it was impossi-ble to set forth more particularly the nature of the defendant's denial and explanation, and he (counsel) further said that for the same reasons it was impossible to have the deposition of the defendant taken with such letail as would be necessary to meet the plaintiff's case, and that a fair trial could not be had in the defendant's absence.

Depositions of Mr. W. M. Gibson, defen-dant, taken, one on the 23d September, the other on the 11th October, before H. H. M. Consul-General at San Francisco, D. A. Mc-Kinley, were read. The first sets forth that defendant, since the 10th August, had been an inmate of St. Mary's Hospital as a patient and undergoing treatment as such; that since his arrival at the Hospital, he had been operated upon by Dr. Geo. H. Pow-ers and attended continuously by Dr. L. Robinson who had given his diagnosis that defendant was suffering from chronic bronchial catarrh of the left lung, that he was physically incapable of making any de-position in this case without great danger of further serious aggravation of his illness; that under the advice of his physician he had declined to do so; that his physician had advised him that any worry, excitement, anxiety or exertion would be liable to bring about a fatal result; that he was therefore unable to return to the Hawaiian Islands; that it had been his intention to return by the steamer of that day, but was compelled

to abandon his intention for that time.

The deposition of Oct. 11th, states that the defendant was suffering severely from dis-ease of a long which incapacitated him from work or travel; that his physician had informed him that it would be a very danger ous undertaking for him to attempt to travel to the Hawaiian Islands and might have a fatal result; that he had been cautioned and directed by his physician to abstain from all business which would involve excitement or physical effort and that upon the advice of said physician he had abstained from making

any deposition in this matter. A sworn certificate made also before consul McKinley by L. Robinson, M. D., M. R. C. P., and visiting physician to St. Mary's Hospital, was also read, in which it is stated that the defendant was under his profes-sional care and that he deemed it extremely dangerous to have him removed from the hospital in his [then] present state. This certificate is dated Oct. 10th.

Mr. W. A. Kinney, of counsel for the plain tiff, made affidavit and said that Mrs. Hoyt's and Mrs. Lyons' evidence had been taken in presence of counsel for defendant which would give a very good notice of the nature of the plaintiff's case; that Mr. Hutchinson, their attorney in San Fran-cisco, so far as his letters indicated, had no notice from Mr. Eickhoff, Mr. Gibson's attorney, of these affidavits of defendant, nor had he any opportunity to inspect them. Counsel also read an extract from a letter received from Mr. Hutchinson, dated Sep tember 22d, in which, among other state-ments, it is asserted that Mr. Gibson was well enough on the 20th to come to Mr. Eick hoff's office where he was seized with a violent fit of coughing and expressed great fear that if he remained to testify he would be seized with a hemorrhage of the lungs, and that in answer to a message to Mr. Eickhoff at noon on the day of writing that Mr. Gibson's deposition would have to be taken early next morning, he had had word sent to him that Mr. Gibson was too sick to testify; that he had no means of knowing whether

defendant certainly was sick or not. The affidavit of Flora Howard St. Clair, plaintiff in the suit, was read, saying that she has revained in Honolulu some five months solely on account of this suit and has detained her sister here during that time for the same object; that her sister now particularly declines to remain any longer than this term of Court: that she at d her sister have been without income from her business owing to the necessity of remaining in constant communication with her attorneys: that a delay of another three months before trial with the chances of further proceedings in the appellate Court would result in great hardships to plaintiff; that her father de ceased in Sacramento City on the 15th July of this year and that her presence is needed there to attend to business complications arising out of the settlement of the estate; that she knows St. Mary's Hospital in San Francisco, that it is one or two miles out of

the city from the Grand Hotel. An affidavit of Mr. Robert Wilcox was read in which he deposed that he met Mr. Gibson and shook naids with him in Consul McKinley's office, in San Francisco, two days before

the satting of the steamer San Pablo. An affidavit made by Mr. Henry Waterhouse was read in which he states that he saw Mr. Gibson about four days after his arrival at San Francisco; that he again saw him on the 10th of October in Kearney street; that he saw him hail a street car and walk fast after it; that the car did not stop to take him; that he then came across to the same side as deponeat was on and walked alongside of side walk about five feet aboud or him; that Mr. Gibern sas looking is much better houlth than when deponent saw him nere: that Commi McKinley told him that Gibs on called at his office nearly every other day and talked of coming down to the Islands either on this or next steamer; that defendant walked like a very healthy man; that deponent walked

about a block near him.

Another affidavit by Dr. N. B. Emerson was read, deposing that the disease known appears before the same Justice and asks on

elderly persons are quite subject; it is a cause of disability and discomfort and not of sadden or speedy death; if it causes death at all, it is by slow degrees, by wearing out; it lays open to other diseases by causing de-bility; among other things, it is likely to shorten sleep by necessitating coughing. If an elderly person, such as Mr. Gibson, could with safety be out on the streets of San Francisco with its variable temperature and climate, it would certainly, in deponent's opinion, be safe for him to come to Hono-lulu. The phrase "a diseased condition of the left lung" is so vague that it is impos-sible for deponent to say much about it, except that if the party affected could with safety modernting. with safety go about the streets of San Francisco, there would certainly not be much risk in a voyage by steamer to Honolulu; and deponent could say with no hesitation what-ever that a person could with perfect safety have his depositions taken in San Francisco if he was well enough to be out of bed, or in bed for that matter, unless in the very last stages of the above diseases. A person hav-

of temperature-and further deponent say-After argument by counsel for the parties, His Honor stated that he would take the matter into consideration.

ing chronic bronchitis would naturally seek

a dry, warm climate with no sudden changes

THURSDAY, October 20th. The King vs Christian Freist, Assault with intent to murder.

A. P. Peterson, Deputy Attorney-General, for the Crown; J. A. Magoon assigned by the Court for the defense. Defendant is indicted for making an as-sault, July 9th, on Pablo Shimener, with intent to commit murder, to which he pleads

not guilty.
Jurora—H. S. Tregloan, Thos. Lindsay,
E. O. White, F. L. Winter, A. H. Mossman,
H. E. McIntyre, J. J. Lecker, A. M. Mellis,
H. Lose, L. M. Mather, T. S. Lansing, W. not gailty.

The jury returned a verdict of guilty.

SATURDAY, Oct. 22. Freist, tried and convicted on the 20th, for ssault with intent to murder, was sentenced to eight years' imprisonment at hard labor and a fine of \$100.

and a fine of \$100.

His Honor rendered a decision on the motion for continuance of the St. Clair-Gibson case, heard on Wednesday last. The suit had been entered on the 21st of May last, and the papers served the same day. For reasons which appeared good at the time, the Court at the July term, granted a continuance of the case to the present. The Court, in July, having set the case peremptorily for trial in October, does not, however, bind the presiding justice of the present term. A commission was issued authorizing evidence to be taken in San Francisco. The commission has been returned, and the papers opened by has been returned, and the papers opened by has ocer returned, and the papers opened by the Court in presence of counsel for both parties and the Clerk of the Court. The Court here read a certificate from Mr. Chick-ering, the commissioner, in which he stated that he was obliged to return the commission executed only in part, for reasons which have already been stated. With respect to the certificate of Dr. Robinson of St. Mary's Hospital, it was very brief. There was no other medical certificate setting forth that the defendant was in such a condition that the cerendant was in such a condition that he could not make his deposition. The affidavit of Mr. Gibson says that he has been advised by his physician, that it would be hazardons to his health to make a deposition. The defendant does not seem to have been properly advised. His attorneys here had evidently given right advise, but the advice has had received in S. E. S. he had received in San Francisco was not good. The Court cannot reconcile the fact that the doctors have allowed defendant to write two long affidavits with their advice and opinion that he was physically unable to answer the interrogatories of counsel through the commissioner. Mr. does not certainly appear to have been confined to his bed. The affidavits are conclusive on that point. If the commission had not been returned, or it a mail had been lost or miscarried, the Court would have granted a continuance, and not allow the case to go to trial without the defendant or his depositions being here. A hardship would otherwise have been inflicted. His Honor stated that it was noticeable in all the affidavits read before the Court, no one of them, except that one of Mr. Neumann of counsel for the defendant, contained anything to indicate that defendant had any defense to make. Hence, his Honor said, in

fore him, consistently grant a continuance.

IN BANCO. October 21st. Present: Chief Justice Judd, Associate Justices McCully, Preston and Bickerton.
Ah In, Appellant, vs. Gip Chang. Appeal from Police Court, Honolulu. The appeal is dismissed. Castle for plaintiff, Neumann for defendant. defendant.

cases were argued and submitted. October 22d. The remainder of the day was occupied in hearing an appeal from the decision of Chief Justice Judd in the Hana Plantation case. Dole and Hatch for Grinbaum & Co.; Smith & Kinney for Mortgagees. Adjourned

at 3:15 p. m.

AT CHAMBERS. October 17th. Ktau Lai et al vs. Yung Ah In et al. Neu-mann for plaintiffs; W.O. Smith for de-fendants. Hearing on master's report herein, filed Oct. 14. The Court heard counsel on both sides and upon defendant's motion continued hearing until Friday, at 154 o'ciock p. m.

In re bankruptcy of A. Barnes.

The Court reads the petition of W. C. Parke, assignee, for discharge, examines the accounts and vouchers, and no one appearing against the petition, the Court orders the accounts approved, and there being no balance of the estate with which to pay a dividend to the creditors who have proved their claims, the assignee is discharged and his bond cancelled. In re bankruptcy of J. R. Gaspar of Onomea, Hilo, Hawaii. The application of W. C. Parke and E. Hutchinson for discharge. also the accounts, and no one appearing to oppose the granting of the discharge, the accounts are approved, and the balance of the estate, \$180 91 cash in the hands of the as-

the assignees filing the receipts of the credit-ors for said final dividend, they will be discharged, and their bonds cancelled. BEFORE CHIEF JUSTICE JUDD. October 18th

signees, equal to a dividend of 61-6 per cent

on the amount proved against the estate, is ordered to be paid to the creditors, and upon

In the matter of Victoria Fortado. Peti-tion of Antone Monsiz Fortado to annul marriage between Pedro and Victoria Fortado, Respondent will perfect appeal from ruling on his demurrer. V. V. Ashford for petitioner. Respondent

in person.

AT CHAMBERS-BEFORE JUDGE PRESTON. Fredericka P. Cooke vs. Clark M. Cooke. Libel for separation. Continued from September 19-26 and October 19, 1887. Hearing of evidence concluded. Contin-ned until a day next week for argument.

BEFORE JUDGE PRESTON.

October 19th. On the 10th inst., Mr. E. Lycan with the attorney, W. R. Castle, appeared before Jus-tice Preston and presented a petition that he

as Chronic Bronchitis is a disease to which | behalf of his client that it be granted. Where upon Mr. Edward Lycan is adjudged a bank-rupt and Monday, the 31st inst., appointed for hearing of proof of claims and election of assigned or assignees, notice of which is ordered to be published. A warrant is issued to the Marshal to take possession of the bankrupt's property, and to notify the credi-tors of the date of hearing.

AT CHAMBERS-BEFORE JUDGE M'CULLY. October 20th.

In re-estate Keoki Knieana, deceased. Petition for administration. Sophia Pease and Heenalu are appointed administratrix and administrator to act under \$250 joint and several bond. Cecil Brown for petitioner, W. C. Achi for Heenalu, M. Thompson for Hookano.

Co-Incident Voyages.

The Rajahmahi, about 1,400 tons, the Ti-

The Rajanman, about 1,400 tons, the Ti-monr, 995 tons, and the Cassipore (cannot vouce for the correctness of this name), of 1,000 tons, left Liverpool, in 1875, for Cal-cutta. The three were towed down the Mer-sey the same day. On getting out to sea they took divergent courses, and did not sight one another again until, after some 128 days, they arrived together of the course. days, they arrived together at the mouth of the Hoogley, and were on the same day towed up the river. One of the seamen on the Rajamahl was Captain Weir, of the Inter-Island Company's steamer Walalcale.

The Opium Bribe.

EDITOR GAZETTE: The general public has no means of knowing what is going on be-bind the curtain on the Royal stage, but it has a right to demonstrate if the programme is not carried out.

The aforesaid public, which now constitutes a standing audience before that stage, arose not long ago to demand that a certain programme be carried out, and was assured through the public press that the Royal sig-nature had said it should be carried out. A very important act in that programme required to be carried out, was the return of

the \$71,000 opium steal, which, if we rightly understood the matter, was the active ingredient which precipitated the reform move-The unfortunate Chinaman who was responsible for that \$71,000 is now dead, but his creditors who furnished the funds are still living, and whatever may afterward be done to them under the laws pertaining to the giving of bribes, the Royal promise should be kept, and that money restored to

its rightful owners.

Nearly four months have passed, however, since the Royal agnature was written, the Legislature is about to convene, but, al-though one voice has already been heard calling for the curtain to rise on the opium scene, no notice has been taken.

Now, as the bringing of indemnity bills for the purpose of covering up crooked work, before the Legislature, is no new thing in the history of Hawali, may it not be excusable to anticipate the contemplation of such a purpose by the Crown in the present case, at the coming session? Not through any member of the Cabinet, who surely can be trusted to keep their fingers out of such dirty work, but through some one. but through some one of the two or three anti-reform members who have been elected. There may be one or more minds who have not yet become disabased of the idea that

bad measures can be carried by the use of a little money, even with the present Legisla-ture, but the public has good reasons to trust that such may find out their mistake.

Insubordimetion should also be plainly dealt with at that time, if not before. It is incompatible with good government. Some thing stronger might well be said on that point, but for the present I'll let it rest here, expressing only the hope that the Cabinet will speedily come to an agreement concern-

ing it, and cause the wiping out of so disgraceful an exhibition. Kohala, October 21st, 1887.

Education in Hawaii.

PRACTICAL APPLICATION OF THE FOREGOING NOTES. I am aware that in the foregoing papers I bave only hinted at what might be done and ought to be done, but have not told how to do it. Neither can I expect to do so except in a general way. It is confessedly very diffi-cult to lay down rules, or give any definite plan of education for practical life. But, as I have already said, attempts have been made in that direction; some with success, and some otherwise. The Hampton Insti-tute, under Gen. S. C. Armstrong, has often conclusion, he could not, on the showing bebeen pointed to as a successful attempt of the kind. But it has cost much more than an ordinary institute on that account. And it is now conceded that such schools must be costly, if they are to be made a success. Why should they not be? Skilled teachers in each

department of manual labor are not to be had for nothing. One appeal was withdrawn, and seven Some institutions have tried teaching all the pupils one handieraft, without regard to any special aptness of the pupils for one kind of craft or another. That is about as sensible as would be the attempt to cut all the pupils of one length. Certain things all should learn; but a careful study of the aptitades and predilections of each papil will alone enable the teacher to its each one into sn employment in which he might be successful as a life work; or to which he may turn as a relief from severe mental work. To repest; the handicrafts should be such as they can follow when they leave school, and not those which they will never think of follow-ing. Neither should their instructors be mere novices, having assumed the trade merely to teach it, but good workmen, men and women of intelligence and conscientionsness,

"An audacious plan," did you say? But tell me if it is not a common sense plan. It must be costly, but can money be better applied? Are we to manage the whole busine of education and have nothing to show for it? We reap as we sow.

Handlerafts are coming into fashion again. thanks to common sense; and men will learn the difference between machine made goods, and those made by hand; and be-tween those jerked off in a hurry, and those which have had due time given them. It is not the "how much" can be done, but the "how well." The great tendency of the age is to find the end of a thing in the least time possible; but men are becoming tired of such productions. Though abundant and cheap, they do not satisfy. Of all the means of saving young men and women from becoming inane, desultory loafers, the pos-session of a trade or handicraft they like to work at, would be one of the best, and would save many a one from an uncertain life. I would, therefore, suggest the following theses in relation to this whole subject:

part of every school day in some handicraft, under the tuition of a skilled master. Such handicraft should be one which the pupils might follow after leaving school. The handicraft of each pupil should coincide, so far as possible, with his aptitude.
4. The state should not be niggardly in furnishing the means of carrying out this plan. Better cut off half the salary of every public officer than not to do it. Better abolish the army and navy, and melt the gons into

1. Each papil should spend a considerable

plowshares, and sell the crown jewels, than not to do this. The Board of Education should take immediate steps (it is in their power) to do this; and the legislature will back them. No bonds would pay better than those usconsary to carry it through.

Arrivals at the Hawaiian Hotel, Octo-ber 21st—C. F. Maw, Anexland; J. M. Hard-ing and wife, New York City: Reuben Hunt, Earla Calne, England; Dr. Cameron Less, Edinburgh, Scotland.